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17 Attorneys for Defendants

DISNEY ENTERPRISES, INC.,

18 PARAMOUNT PICTURES CORP.,

SONY PICTURES ENTERTAINMENT, INC.,

19 TWENTIETH CENTURY FOX FILM CORP.,

NBC UNIVERSAL, INC., WARNER BROS.

20 ENTERTAINMENT, INC. and VIACOM, Inc.

21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

23  
24 REALNETWORKS, INC., a Washington  
25 Corporation; and REALNETWORKS  
HOME ENTERTAINMENT, INC., a  
26 Delaware corporation,

27 Plaintiffs,

CASE NO. C 08 4548 HRL

**APPLICATION TO SEAL (1) NOTICE OF  
APPLICATION AND *EX PARTE*  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE: PRELIMINARY  
INJUNCTION AND MEMORANDUM OF**

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vs.

DVD COPY CONTROL ASSOCIATION, INC., a Delaware nonprofit corporation, DISNEY ENTERPRISES, INC., a Delaware corporation; PARAMOUNT PICTURES CORP., a Delaware corporation; SONY PICTURES ENTERTAINMENT, INC., a Delaware corporation; TWENTIETH CENTURY FOX FILM CORP., a Delaware corporation; NBC UNIVERSAL, INC., a Delaware corporation; WARNER BROS. ENTERTAINMENT, INC., a Delaware corporation; and VIACOM, Inc., a Delaware Corporation,

Defendants.

**POINTS AND AUTHORITIES AND (2)  
DECLARATION OF GLENN D.  
POMERANTZ IN SUPPORT OF *EX PARTE*  
APPLICATION**

Lodged concurrently herewith:

- 1) [Proposed] Order Granting Application
- 2) DOCUMENTS REQUESTED TO BE FILED UNDER SEAL

1 Pursuant to Civil Local Rule 7-11 and 79-5, Defendants Disney Enterprises, Inc.,  
2 Paramount Pictures Corp., Twentieth Century Fox Film Corp., and Warner Bros. Entertainment,  
3 Inc., respectfully apply for an order sealing the following documents:

- 4 • Notice of Application and *Ex Parte* Application for Temporary Restraining  
5 Order and Order to Show Cause Re: Preliminary Injunction; Memorandum  
6 of Points and Authorities
- 7 • Declaration of Glenn D. Pomerantz in Support of *Ex Parte* Application

8 A “compelling reason” exists to seal these documents. *See Kamakana v. City and*  
9 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (holding that “[a] party seeking to seal a  
10 judicial record . . . bears the burden of overcoming . . . the ‘compelling reasons’ standard”); *Foltz*  
11 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003). The confidential  
12 material at issue concerns a single page from the “Technical Specifications” of the “CSS License  
13 Agreement” between RealNetworks, Inc. and the DVD Copy Control Association, Inc. (“DVD  
14 CCA”). The Technical Specifications contain highly-confidential and sensitive trade secret  
15 information. This page from the “Technical Specifications” is attached as Exhibit F to the  
16 Declaration of Glenn D. Pomerantz in Support of the *Ex Parte* Application. The Memorandum of  
17 Points and Authorities in Support of the *Ex Parte* Application quotes a single line from the  
18 document.

19 Defendants’ counsel received the “Technical Specifications” page from the DVD  
20 CCA. Declaration of Glenn D. Pomerantz In Support of Application to Seal, ¶ 2. In obtaining  
21 the document, counsel agreed to maintain the strict confidentiality of the document pursuant to  
22 the terms of the CSS License Agreement, and that the document could only be used in this  
23 litigation if it were filed under seal and outside of the public record. *Id.*

24 The “Technical Specifications” contain highly-sensitive and confidential trade  
25 secret information relating to the authentication and decryption features of “CSS,” or the Content  
26 Scramble System, which Defendants have used to prevent playable copies of DVD content from  
27 being made. Release of this information into the public sphere threatens to undermine irreparably  
28 the integrity of the CSS protection scheme.

1 Courts in other proceedings have sealed this very document. The California  
2 Superior Court of the County of Santa Clara in *DVD Copy Control Ass'n, Inc. v. Kaleidescape,*  
3 *Inc.*, No. 1-04 CV031829 sealed the Technical Specifications in their entirety. In affirming the  
4 court's sealing order, the California Court of Appeal in *DVD Copy Control Ass'n, Inc. v.*  
5 *Kaleidescape, Inc.*, 2007 WL 2063101 (Cal. App. 6 Dist. July 19, 2007), noted that for "obvious  
6 reasons, the motion picture industry" has "desired to keep the CSS technology a secret," that in  
7 "an attempt to keep CSS from becoming generally known, the industries" have "agreed upon a  
8 restrictive licensing scheme," and that "[a]ll licensees must agree to maintain the confidentiality  
9 of CSS." *Id.* at \*1. (quoting *DVD Copy Control Assn., Inc. v. Bunner*, 116 Cal.App.4th 241,  
10 245-246 (2004)).

11 This Application to Seal is narrowly tailored to protect the public's interest in  
12 access to judicial records and the public policies favoring disclosure. *Kamakana*, 447 F.3d at  
13 1178. Defendants have filed with the court identical public redacted versions of the  
14 Memorandum of Points and Authorities in Support of the *Ex Parte* Application and the  
15 Pomerantz Declaration in Support of the *Ex Parte* Application. With respect to the  
16 Memorandum, Defendants have redacted only a single sentence quote from the Technical  
17 Specifications page. And with respect to the Pomerantz Declaration, Defendants have redacted  
18 Exhibit F, the Technical Specifications page.

19 For these reasons, the Court should grant the Application to Seal.  
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1 DATED: October 3, 2008

MUNGER, TOLLES & OLSON LLP

2 MITCHELL SILBERBERG & KNUPP LLP

3 GREGORY P. GOECKNER  
4 DANIEL E. ROBBINS

5 By: 

6 GLENN D. POMERANTZ

7 Attorneys for Defendants

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1. I am an attorney in the law firm of Munger, Tolles & Olson LLP, counsel of record to Plaintiffs in this action. The contents of this declaration are within my personal knowledge. If called as a witness in this action, I could and would testify competently to the contents of this declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 29th day of September 2008 at Los Angeles, California.

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